

SUMMARY OF AMENDMENTS TO FRBP
EFFECTIVE 12/1/07

[This summary is provided as a public service to highlight some of the rules changes, and is not intended to be a complete discourse on the changes. Attorneys should not rely on this summary and are urged to review the amended rules themselves.]

Here is a summary of the changes to the Federal Rules of Bankruptcy Procedure that become effective 12/1/07.

Rule 1014. Amendment recognizes authority of court on its own motion to transfer cases filed in the proper district, and to dismiss or transfer cases filed in the wrong district. However, notice and hearing are required.

Rule 3007. The rule covers objections to claims. Separate objections are now required, except for objections that fall into eight categories such as duplicate, untimely or lack of documentation. Any demand for relief of a kind specified in FRBP 7001 can't be part of a claim objection, but an adversary proceeding can include a claim objection. "Omnibus" objections to claims must follow a prescribed format, and can't contain objections to more than 100 claims.

Rule 4001. This rule governs relief from stay, cash collateral, obtaining credit, etc. Most of the changes are similar to our local rule B-4001-2 requiring greater notice and specificity in Chapter 11 cases. Any party proposing to use cash collateral, obtain credit, or obtain approval of an adequate protection agreement, an agreement to modify or terminate the stay, or to grant a senior or equal lien on property, must submit a proposed order and give more extensive notice to interested parties of a number of specific terms, both that they are present and where they can be found - again, very similar to our local rule B-4001-2. The accompanying comparison of new FRBP 4001 to our local rule shows the strong overlap. Motions more than five pages in length must begin with a "concise statement" summarizing pertinent items.

Rule 6003. This new rule restricts the Court's ability to enter orders on certain matters within the first 20 days after the filing. (The motion can be filed - it's only entry of the order that is prohibited.) The rule impacts applications to employ; motions for use, sale, or lease of property - including a motion to pay all or part of a claim that arose before the filing of the petition [but not a motion under FRBP 4001]; and motions for assumption or assignment of executory contracts. A party can still obtain an order on one of these motions if the party can establish that 'relief is necessary to avoid immediate and irreparable harm.'

Rule 6006. Changes to this rule, governing the assumption, rejection, or assignment of an executory contract or lease, are much like the new "claims objection" rule in that they impose restrictions on what can be included in a single motion. "Omnibus" motions are permitted in certain situations.

Rule 7007.1. The rule on corporate ownership statements is amended to make clear that the statement should be filed with the first document filed on behalf of a corporation in an adversary

proceeding, even if that document is only an appearance.

Rule 9005.1. A new rule, entitled “Constitutional Challenge to a Statute - Notice, Certification, and Intervention,” is added to adopt new FRCP 5.1 [which replaces FRCP 24(c)].

Rule 9037. This new rule is entitled “Privacy Protection for Filings Made with the Court” and incorporates Judicial Conference policies addressing privacy concerns resulting from public access to electronic case files. Responsibility for redacting personal identifiers is placed on the filer, and specific instruction on what filers should redact is provided. Certain exemptions are listed, and parties are provided with instructions for options such as obtaining a protective order; filing unredacted copies under seal; and filing a reference list. An “entity” waives the protection of the rule as to the entity’s own information by filing it without redaction and not under seal.

COMPARISON OF AMENDED FRBP 4001
TO S.D.IND. L.R. B-4001-2

Term to be Disclosed*	FRBP 4001	L.R. B-4001-2
Cash Collateral Use (Non-Consensual)		
name of each entity with interest in cash collateral	X	? (implicit)
purpose for use of cash collateral	X	X
material terms including duration of use	X	X
adequate protection to be provided or explanation why none required	X	X
Obtaining Credit/ Agreement on Cash Collateral Use, Adequate Protection, Credit		
interest rate	X	X
maturity	X	X
events of default	X	X
liens	X	X

borrowing limits	X	X (total amount sought plus maximum available on interim and final basis)
borrowing conditions	X	X (incl. limitations on use)
budget		X
grant of priority or lien on property of the estate	X	X (if priming lien)
adequate protection or priority for a pre-petition claim, including new lien rights, or use or property of estate or credit to make cash payments on claim	X	X
determination of validity, enforceability, priority, or amount of pre-petition claim or lien	X	X
waiver or modification of stay	X	X
waiver or modification of any entity's authority or right to file a plan, seek extension, etc.	X	
deadlines for filing plan or disclosure statement, or obtaining approval or confirmation	X	X (and plan terms)
waiver or modification of non-bankruptcy law concerning perfection of lien, or enforcement of lien	X	
release, waiver or limitation on any claim or other cause of action of estate or trustee, including modification of SOL	X	
indemnification	X	

release/waiver/limits on 506(c) rights	X	X
granting of lien on bankruptcy causes of action	X	X
whether provisions proposed to remain in effect if interim approval granted but final relief denied	X	
loan documentation costs		X

* “Disclosed” means the item must be listed or summarized and the location within relevant documents revealed. See specific subparagraphs of FRBP 4001 for guidance.

Note also that FRBP 4001 requires filing of a proposed order - the local rule does not.